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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,380	04/05/2001	Richard K. Duggan	CA920000050US2	2899
7590	09/22/2004		EXAMINER	
A. Bruce Clay IBM Corp. Dept. T81/Bldg.503 P.O Box 12195 Research Triangle Park, NC 27709			BAROT, BHARAT	
			ART UNIT	PAPER NUMBER
			2155	

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/826,380	DUGGAN ET AL.	
	Examiner	Art Unit	
	Bharat N Barot	2155	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 05 April 2001.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-34 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1-34 is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____ .

DETAILED ACTION

Specification

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 6-7, and 23-24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 6-7, and 23-24 recite a program causing a computer to perform some steps. A program not claimed as embodied in computer readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer (See MPEP section 2106, Seventh Edition, Revision No. 1 dated February 2000, at page 2100-10 and 2100-1 1).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Hoyer et al (U.S. Patent No. 6,381,635). Hoyer's patent meets all the limitations for claims 1-34 recited in the claimed invention.

6. As to claim 1, Hoyer et al teach a method for a servlet of an application server running on a Web server to provide performance data to a performance tool running on a client computer, where the Web server and the client computer are in communication over a network using a network protocol (see abstract; figures 2-3; and column 6 line 47 to column 7 line 21), the method comprising: receiving a request for performance data from the performance tool, where the request is transported over the network (figures 2 and 5; and column 8 lines 52-53); obtaining the performance data as per the request; formatting the performance data into a data structure; and providing the data structure

to the Web server for transport to the performance tool over the network (figures 2-3; column 8 line 53 to column 9 line 34; column 12 lines 9-56).

7. As to claims 2-5, Hoyer et al teach that the data structure is formatted in XML or HTML (column 6 lines 24-27; and column 7 line 66 to column 8 line 14); the request is formatted in HTTP (column 6 lines 16-17 and 47-60; column 9 line 55 to column 10 line 16; and column 10 lines 42-44); the network protocol is TCP/IP (column 6 lines 35-37); and the data structure has a tree topology (figure 5; column 10 lines 45-61; and column 11 lines 52-59).

8. As to claims 6-7, Hoyer et al disclose a computer program comprising computer program code means adapted to perform all of the steps of any of claims 1 to 5 when the program is run on a computer and embodied on a computer readable medium (figures 2-3 and 5; column 6 lines 61-66; column 7 lines 22-36; column 7 line 66 to column 8 line 14; and column 8 lines 52-63).

9. As to claims 8-16, they are also rejected for the same reasons set forth to rejecting claims 1-5 above, since claims 8-16 are merely an apparatus for the method of operation defined in the claims 1-5.

10. As to claim 18, Hoyer et al teach a method for performance tool running on a client computer to retrieve performance data from a servlet of an application server

running on a Web server, where the Web server and the client computer are in communication over a network using a network protocol (see abstract; figures 2-3; and column 6 line 47 to column 7 line 21), the method comprising: sending a request for performance data to the servlet, where the request is provided to the client computer for transport over the network (figures 2 and 5; and column 8 lines 52-53); and receiving a data structure containing the performance data transported from the servlet over the network to the client computer(figures 2-3; column 8 line 53 to column 9 line 34; column 12 lines 9-56).

11. As to claims 19-24, they are also rejected for the same reasons set forth to rejecting claims 2-7 above.

12. As to claims 25-34, they are also rejected for the same reasons set forth to rejecting claims 18-22 above, since claims 25-34 are merely an apparatus for the method of operation defined in the claims 18-22.

Additional References

13. The examiner as of general interest cites the following references.

- a. Mackey et al, U.S. Patent No. 6,691,259.
- b. Faris et al, U.S. Patent No. 6,677,858.

Contact Information

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bharat Barot whose telephone number is (703) 305-4092. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alam, Hosain, can be reached at (703) 308-6662. A central official fax number is (703) 872-9306.

Any inquiry of general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 305-3900.

Patent Examiner Bharat Barot

Art Unit 2155

September 14, 2004

Bharat Barot
BHARAT BAROT
PRIMARY EXAMINER